

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

ORIGINAL

In the Matter of:)

Grandfathered Short-Spaced)
FM Stations)

MM Docket No. 96-120
RM-7651

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JUL 23 1996

TO: Chief, Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REQUEST FOR LEAVE TO SUBMIT LATE-FILED COMMENTS

The attached Comments of Eleven-Fifty Corp., which are being tendered simultaneously herewith, were prepared for submission in this proceeding in the incorrect belief that the filing deadline was today. As they were being completed, it was learned that the deadline was, in fact, yesterday. Since they express views of the filer that could be made as well in reply comments, and no party will be prejudiced by their acceptance and due consideration, it is respectfully requested that the pleading be accepted for late filing.

Respectfully submitted,

By: Marnie K. Sarver
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July 23, 1996

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COMMENTS OF ELEVEN-FIFTY CORP.

Eleven-Fifty Corp. ("Eleven-Fifty"), by its attorneys, and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. §1.415, hereby comments on the proposals set forth in the above-captioned Notice of Proposed Rule Making (hereinafter "NPRM" or "Notice"), MM Docket 96-120, FCC 96-236, released June 14, 1996, lifting restrictions on facilities modifications by grandfathered short-spaced FM stations. These comments are specifically directed to Proposal 2 which would eliminate both the second and third-adjacent channel spacing requirement for grandfathered short-space stations. Notice at ¶8. Eleven-Fifty opposes the wholesale elimination of the current rule in cases where significant new or additional interference would result from modification of short-spaced second- and third-adjacent-channel FM stations.

Eleven-Fifty is the licensee of FM Station KIIS-FM, Los Angeles, California. It operates on a channel second-

adjacent to Station KJLH, Compton, California. The protected and interfering contours of KJLH are wholly encompassed by the 1 mV/m contour of KIIS-FM, a scenario commonly referred to as a "donut" case. As such, Eleven-Fifty is intimately familiar with the problem of interference from closely-spaced stations and would be adversely affected by the Commission's proposal to relax the rules affecting such stations.

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In 1993, Eleven-Fifty informally objected to an application by KJLH licensee Taxi Productions, Inc. ("Taxi" FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY seeking to increase power (File No. BPH-920731IH). The application, which remains pending, acknowledges that the modification will cause increased interference to KIIS-FM. In fact, this increased interference will result in substantial harm to KIIS-FM and significant loss of service to the public, demonstrating the disadvantages of the Commission's proposed sweeping approach to second- and third-adjacent-channel modifications. An approach is needed that ensures the public interest is not disserved in individual cases, such as the one affecting KJLH and KIIS-FM.

The Commission's objective, as stated in the Notice, is to increase the flexibility of second- and third-adjacent-channel grandfathered stations to respond to "changing conditions." Notice at ¶ 24. As its premise for doing so, it cites the "small risk of interference ... localized in the immediate area of the transmitter" -- a "very small area." Id.

The situation affecting KIIS-FM in Los Angeles is compelling evidence that the impact of such a wholly unfettered approach will in many instances be very substantial, contrary to the Commission's assumptions. Such an approach should not be adopted, since it is premised on a faulty analysis.

The KJLH transmitter is located in the Baldwin Hills section of Los Angeles, within two miles of the Santa Monica Freeway -- the most heavily-traveled highway in Southern California. The KIIS-FM transmitter is on Mt. Wilson, 23 miles from the freeway. In the area of the Santa Monica Freeway, interference from KJLH already causes dropouts of the KIIS-FM signal. This problematic situation, which results in numerous lost listeners and listener complaints, would be far more pronounced if KJLH's proposed power increase were to be allowed. This is not in any sense a "small risk of interference" as suggested by the Commission. Indeed, an increase in power at the same site is guaranteed to cause increased interference, which is, in fact, frankly acknowledged in the pending KJLH application. Moreover, the congested nature of the area and the freeway affected by the increased KJLH interference would obviously present a dramatically different situation from that of a remote transmitter area inhabited by a limited number of listeners. In short, the Commission's proposal here totally overlooks adverse situations such as the one confronting KIIS-FM.

Nor would KJLH present the only instance of new and increased interference to KIIS-FM resulting from the rule change. Station KACD, Santa Monica, California operates at a site in Baldwin Hills very close to the KJLH site and is also second-adjacent to KIIS-FM. Similarly, its contours are wholly within the KIIS-FM 1 mV/m contour. It too has an application pending to increase power (File No. BPH-911010IG), which will impact the same area as the KJLH application, causing additional interference to KIIS-FM.

The rule, as proposed in the Notice, does not address situations where second- and third-adjacent-channel interference impacts an intense concentration of listeners located in or moving through an area near the transmitter. These situations, which do not in any way conform to the premises underlying the proposal, clearly must be examined on an ad hoc basis. Eleven-Fifty submits, therefore, that applications which fail to demonstrate that the impact is, in fact, minimal should be denied when, on balance, it is found that the public interest would not be served by granting them. Any other course of action would simply ignore the particular adverse interference effects of power increases like those which threaten KIIS-FM.

The Notice states that the number of stations likely to be affected by Proposal 2 is limited and smaller today than in 1964. This broad assertion should not be used as grounds for awarding stations proposing to create additional interference a

broad presumption that doing so will serve the public interest, foreclosing opportunities for those who will suffer interference from obtaining redress where the conditions justify it -- i.e., where existing listeners would be materially affected.

Eleven-Fifty strongly urges the Commission in its revision of Section 73.213 not to adopt the blanket approach of Proposal 2. Where actual conditions, like those affecting KIIS-FM, sharply contradict the premises upon which the revisions are based, an ad hoc review of applications is clearly appropriate and should be required.

Respectfully submitted,

ELEVEN-FIFTY CORP.

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July 23, 1996

CERTIFICATE OF SERVICE

I, Lila A. Mitkiewicz, hereby certify that a true and correct copy of the foregoing REQUEST FOR LEAVE TO SUBMIT LATE FILED COMMENTS and COMMENTS OF ELEVEN-FIFTY CORP. were served this 23rd of July, 1996, by U.S. first-class mail, postage prepaid to the following:

Eric L. Bernthal, Esq.
Steven H. Schulman, Esq.
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C.

Counsel for KFI, Inc.


Lila A. Mitkiewicz

CERTIFICATE OF SERVICE

I, Lila A. Mitkiewicz, hereby certify that a true and correct copy of the foregoing REQUEST FOR LEAVE TO SUBMIT LATE-FILED COMMENTS and COMMENTS OF ELEVEN-FIFTY CORP. were served this 23rd of July, 1996, by U.S. first-class mail, postage prepaid to the following:

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1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C.

Counsel for KFI, Inc.

A handwritten signature in cursive script, reading "Lila A. Mitkiewicz", written over a horizontal line.

Lila A. Mitkiewicz